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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL - 8 1997

In the Matter of)
)
Installment Payments for)
PCS Licenses)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of Part 1 of the)
Commission's Rules --)
Competitive Bidding Proceeding)

WT Docket No. 97-82

**REPLY COMMENTS OF COMCAST CORPORATION ON
BROADBAND PCS C AND F BLOCK INSTALLMENT PAYMENT ISSUES**

Comcast Corporation ("Comcast") hereby submits its reply comments in response to the Commission's Public Notice of June 2, 1997, seeking comment on a number of proposals to revise the installment payment plans of broadband PCS C and F Block licensees.^{1/} In its initial comments, Comcast established that any changes in the C and F Block installment plans which would significantly alter the economic terms and conditions set forth in the Commission's rules, and accepted by the C and F Block licensees, would be bad public policy and contrary to the public interest. Such changes would fundamentally undermine the Commission's market-based mechanisms for the auction of spectrum, send clear signals to market participants that the Commission's auction rules will not be respected or enforced, and encourage more speculation in future auctions by parties who misrepresent or mispredict their ability to finance their bids.

^{1/} Public Notice, "Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues," WT Docket 97-82, DA 97-679 (rel. June 2, 1997) ("Public Notice").

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Aside from these compelling public policy considerations, the comments present in clear relief a critical additional problem with the proposals under consideration: any such action would violate statutes governing financial obligations to the federal government, as well as long established precepts of administrative law. It is also clear, given the strong opposition to these proposals by participants in other auctions, as well as bidders who withdrew from the C Block auctions when prices reached irrational levels, that any such relief is certain to result in protracted litigation, which the Commission will lose. With this cloud of uncertainty hanging over any such relief, it is doubtful that sophisticated lenders and investors will make additional financial commitments even if the Commission were to provide significant economic relief.

Review of the comments also makes clear that there is absolutely no record evidence which supports such relief. The parties advocating relief have failed to provide evidence of general changes in marketplace conditions that are significant enough, and long lasting enough, to justify significant changes in payment terms. Rather, the record at most establishes that those C Block bidders - and there are far too many of them - who grossly overbid for their spectrum are now unable to obtain financing. This is not a change in "market conditions," but precisely the marketplace consequence of speculative overbidding which the Commission's auction rules are designed to deter.

Comcast continues to support much more modest relief within the framework of the Commission's existing auction rules. Thus, Comcast does not oppose proposals to allow C Block winners to make annual, rather than quarterly, payments. Comcast also notes with interest proposals for an amnesty period during which bidders would be permitted to turn in their licenses without penalty. Based upon the brief discussions of such proposals to date, Comcast believes that the parties to this proceeding have not had a fair opportunity to analyze such proposals, nor

is the current record sufficient to support them. Should the Commission nonetheless adopt any such proposal, fundamental fairness and adherence to Commission policies requires that parties turning in licenses not be permitted to bid on any licenses at reauction, that all payments due prior to the amnesty period must be paid to and retained by the government, and that a similar opportunity be afforded to participants in all other auctions. Given the record before the Commission, relief which applies only to irresponsible bidders in the C Block would be arbitrary and capricious, and illegal.

I. THE COMMENTS CLEARLY ESTABLISH THAT SIGNIFICANT CHANGES IN THE ECONOMIC TERMS AND CONDITIONS ACCEPTED BY C BLOCK BIDDERS WOULD BE ILLEGAL

Comcast's comments set forth in detail why significant economic changes in the C Block winners' installment payment plans would be fundamentally inconsistent with the Commission's auction regime, its prior decisions enforcing these rules and penalizing similarly situated parties, and the need to protect the integrity of the Commission's auction regime by discouraging the sort of speculative bidding which characterized the C Block auction. In light of these fundamental inconsistencies with the Commission's auction rules, and the policies underlying these rules, it necessarily follows that Commission action granting significant economic relief would be arbitrary and capricious under settled administrative law. A number of parties, particularly BellSouth Corporation, have set forth detailed arguments which further reinforce this conclusion, and which make clear that any such Commission action is unlikely to survive judicial scrutiny.

First, BellSouth sets forth a compelling case that any relief which would reduce the net present value of debt owed to the U.S. Treasury is prohibited by Title 31 of the United States Code, which governs the collection and compromise of claims of the government, including

debts owed to it.^{2/} BellSouth's comments establish that the Commission's authority to compromise a claim is limited to claims with a principal amount not exceeding \$100,000, in the absence of express authorization from Congress, which has never been granted. Comcast also supports BellSouth's legal contention, set forth in detail in its comments, that the Commission's ex post facto deviation from its auction rules and the payment requirements set forth in the rules it adopted in advance of the auction would violate due process and fundamental fairness by discriminating against the many bidders who relied upon the Commission's rules in deciding whether, and how much, to bid in the C Block auctions.^{3/} Finally, Comcast agrees with BellSouth that grant of relief on a waiver basis would clearly violate the Administrative Procedure Act. As BellSouth, and the courts, have made clear, the longstanding requirement that the FCC consider waiver requests "emphatically does not contemplate that an agency must or should tolerate evisceration of a rule by waivers."^{4/}

As Comcast did in its comments, a number of commenters collected the Commission's many prior statements that relief of the sort requested by C Block winners cannot be countenanced if the integrity of the Commission's auction regime is to be maintained. The fact that the Commission is acting on behalf of the United States Government with respect to substantial monetary obligations incurred by private parties in no way changes the basic precepts of administrative law that apply to Commission action. The Commission must follow its own rules and procedures, acting in light of the policies that underlie them. The parties seeking relief

^{2/} BellSouth Comments at 10-13.

^{3/} Id. at 13-15.

^{4/} Id. at 22, citing WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

have presented absolutely no cognizable basis for deviation from the Commission's payment requirements.

II. THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT SIGNIFICANT CHANGES IN THE INSTALLMENT PAYMENT PLANS

The C Block winners seeking relief, and their supporters, have made much of supposed changes in market conditions which justify their inability to meet their commitments to pay off their bids. As a threshold matter, none can explain why, even if market conditions have changed, this would justify releasing them from their bids, when so many other parties that the "market" failed to finance have been held to their bids, and strictly penalized for their failures.^{5/} Beyond this, other than self-serving assertions, there is no compelling evidence that changes in general market conditions justify relief of the magnitude these auction winners are requesting, rather than use of the Commission's established procedures, including grace periods, and transfers to more financially qualified entities.

Rather, the record reveals nothing more than the unsurprising fact that C Block bidders who overpaid for their spectrum cannot obtain financing. Thus, a number of C Block winners have filed comments opposing relief, and stating that they were able to finance both their auction payments and their businesses on a going forward basis.^{6/} Similarly, in the F Block, where prices were economically rational, winners indicated that they are able to obtain financing in current

^{5/} See Comments of Comcast Corporation at 12-13.

^{6/} See Comments of Cook Inlet Region, Inc., Cook Inlet Western Wireless PV/SS PCS, L.P., Western Wireless Corporation, AirGate Wireless, L.L.C., Aerial Communications, TeleCorp, Inc., and Airadigm Communications, Inc. at 2-3; Initial Comments of Airadigm Communications, Inc. at 1-2; see also Comments of Omnipoint Corporation at 6 (opposing all relief except a temporary period during which C and F block licensees may pay on an annual rather than quarterly basis).

markets.^{7/} In short, the true problem is not market conditions, but the market's view of the distressed bidders. Bear, Stearns, an investment bank which initially helped General Wireless, Inc. raise equity capital, perhaps unwittingly concedes that this in fact is the problem:

The essence of the C-Block problem is that the value of the FCC obligation exceeds the value that equity investors are currently willing to assign to the entire company.^{8/}

Translation: many C Block winners overbid for their spectrum and no rational investor or lender will finance a business with such excessive obligations. Comcast submits that the remedy to this problem is not to reward speculators by allowing them to retain their licensees on more favorable terms, but rather to permit these auction winners to transfer them to better qualified entrepreneurs or, at most, to turn in their licenses during an amnesty period as described above.

The Commission should also reject contentions that a substantial bailout of the more speculative C Block winners is necessary to introduce additional competition in the marketplace. A bailout of specific C Block winners merely protects individual competitors, not competition. If the Commission is to base relief on this consideration, it must first gather far more compelling evidence, on a case by case basis, that bailout of individual competitors will enhance competition in specific local markets in some economically meaningful sense. The record before the Commission is devoid of any such evidence.

^{7/} See Comments of Northcoast Communications Inc., LLC, at 6-7.

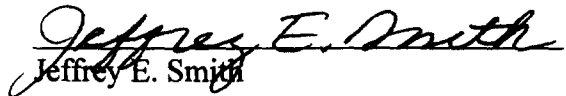
^{8/} Letter from Norman C. Frost, Jr., Managing Director, Bear, Stearns & Co. Inc., to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, WT Docket 97-82, at 1 (June 23, 1997).

CONCLUSION

The requests for relief currently before the Commission put the Commission at a crossroads in its auction policy. The expedient route may very well be to give in to short term pressures and grant the relief requested by the most irresponsible C Block winners and their supporters. The costs of expedience, however, are likely to be substantial. The C Block auctions produced exactly the kind of speculation which the Commission has feared from the beginning and which its rules were designed to deter. If the Commission now rewards such speculation, the price will be exacted in the Commission's credibility, the integrity of future auctions and perhaps even the political viability of spectrum set-asides for small businesses. Even the gains of expedience will be short lived if, as Comcast believes to be likely, the courts overturn any relief granted. The Commission should do the right thing and adhere to its auctions rules and policies.

Respectfully submitted,

COMCAST CORPORATION

A handwritten signature in cursive script, reading "Jeffrey E. Smith".

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Dated: July 8, 1997